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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of )  
MUR 6393 ) CASE CLOSURE UNDER THE  
NEBRASKA REPUBLICAN PARTY ) ENFORCEMENT PRIORITY  
AND RODNEY KROGH, AS TREASURER ) SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make no reason to believe findings. For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings in MUR 6393.

In this matter, the complainant, Laura A. Wigley of the Nebraska Democratic Party ("NDP"), alleges that the Nebraska Republican Party and Rodney Krogh, in his official capacity as treasurer ("NRP"), violated the Act by failing to include disclaimers

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1 on certain pieces of bulk electronic mail ("email"), defined as email of more than 500  
2 substantially similar communications.<sup>1</sup> Specifically, the complaint asserts that the NRP,  
3 failed to include the required disclaimer - "Paid for by the Nebraska Republican Party  
4 and not authorized by any candidate or candidate's committee" - on eight email  
5 communications.<sup>2</sup> The complaint also states that several of these emails urge recipients to  
6 volunteer for specific federal candidates, invite guests to a fundraiser featuring a federal  
7 candidate, or solicit funds for a federal committee. As a result, the complaint concludes  
8 that the communications lacked the required disclaimers for communications that solicit  
9 federal funds or contain express advocacy.

10 The eight emails, which were sent by the NPR on December 19, 2009, December  
11 23, 2009, April 21, 2010, April 29, 2010, June 3, 2010, August 31, 2010, September 10,  
12 2010, and September 28, 2010, are attached to the complaint. While all eight emails  
13 identify the sender as the "Nebraska Republican Party [info@negop.org](mailto:info@negop.org)" the recipient line  
14 is left blank. The complainant does not indicate on what basis it determined these eight  
15 email communications constituted bulk email and, therefore, violated the Act.

16 In response, the NRP denies the complainant's allegation that it was required to  
17 include disclaimers on the emails at issue. The NRP contends that disclaimers were not  
18 required because the applicable regulation, 11 C.F.R. § 110.11, applies only to  
19 "unsolicited" email of more than 500 substantially similar communications and the eight  
20 emails at issue were directed to email subscribers. Citing the Commission's Explanation

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<sup>1</sup> The complaint does not identify the specific statutes or regulations it alleges the NRP violated.

<sup>2</sup> The complaint references two NRP email communications, dated May 12, 2010 and June 25, 2010, which do include disclaimers and includes a copy of a June 25<sup>th</sup> email. The May 12, 2010 email appears to be missing, although an invitation to an event for NRP member Duane Acklie found at pages 25 and 26 of the complaint, may be part of that email communication.

1 and Justification relating to the disclaimer regulations, the NLP states that a disclaimer is  
2 not required on email communications where recipients have taken some affirmative step  
3 to be on a list used by the sender. Explanation and Justification, 67 Fed. Reg. 76964  
4 (Dec. 13 2002). According to the NRP, the eight email communications at issue were not  
5 directed to the general public, but were instead internal party communications sent to  
6 individuals who had previously expressed an interest in the NRP pursuant to the party  
7 committee's opt in system for email subscribers. The response identifies the recipients of  
8 the eight emails as party officers, central committee members, local party officers, key  
9 supporters, regular contributors, party activists and volunteers, but does not provide the  
10 actual number of each email issued by the party committee.<sup>3</sup> Although the NRP states  
11 that it is theoretically possible that one or more recipients of the emails at issue could  
12 have gotten on the list without taking some affirmative step to do so, it contends that this  
13 would not be the norm under its "opt in" system.

14 In conclusion, the response states that the eight emails at issue constitute internal  
15 party communications rather than "unsolicited" emails and, therefore, do not require  
16 disclaimers pursuant to 11 C.F.R. § 110.11. Accordingly, the NRP requests that the  
17 complaint be dismissed and the matter closed.

18 Any public communication made by a political committee, including  
19 communications that do not expressly advocate the election or defeat of a clearly  
20 identified candidate or solicit a contribution, must display a disclaimer stating who paid

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<sup>3</sup> The response also provides the following description of the eight emails at issue: an invitation to a rally (December 19, 2009), a Christmas card/greeting (December 23, 2009), a solicitation to join the Nebraska Republican Party Wall of Fame (April 21, 2010), an invitation to a 2010 Primary Election Night Party (April 29, 2010), an announcement relating to county party conventions (June 3, 2010), a newsletter described as the "Chairman's Report" (August 31, 2010), an announcement regarding the opening of a call center (September 10, 2010), and an announcement relating to a door-to-door volunteer effort (September 28, 2010).

1 for the communication and whether or not it was authorized by a candidate, authorized  
2 committee or agent for either entity. 11 C.F.R. § 110.11(a) and (b). These disclaimer  
3 requirements apply to political committees' websites available to the general public and  
4 emails of more than 500 substantially similar communications. 11 C.F.R. § 110.11(a)(1).

5 As noted in the response, the Commission limited the scope of the email requirement to  
6 email communications involving more than 500 substantially similar unsolicited emails.

7 *See Explanation and Justification*, 67 Fed. Reg. 76964 (Dec. 13, 2002). There is no  
8 evidence contradicting the NRP's assertion that the eight emails at issue were sent only to  
9 individuals who had previously opted into the party committee's subscriber system for  
10 email communications and, therefore, did not require disclaimers. *See* 11 C.F.R.

11 § 110.11(a)(1).

12 This Office believes that the complainant's allegations that the NRP violated the  
13 Act and Commission regulations by failing to include disclaimers on eight email  
14 communications are insufficient to overcome the NRP's specific denials. Accordingly,  
15 this Office recommends that the Commission find no reason to believe that the Nebraska  
16 Republican Party and Rodney Krøgh, in his official capacity as treasurer violated 11  
17 C.F.R. § 110.11(a) and (b).

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**RECOMMENDATIONS**

1. Find no reason to believe that the Nebraska Republican Party and Rodney Krogh, in his official capacity as treasurer violated 11 C.F.R. § 110.11(a) and (b).
2. Close the file and send the appropriate letters.

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8/23/11  
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